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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PROGRESSIVE DIRECT INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.)
)
MICHAEL LAYTHORPE, an Individual;)
DOES I through X; and ROE)
CORPORATIONS I through X, inclusive,)
)
Defendant.)
)
MICHAEL LAYTHORPE,)
)
Counter-Claimant,)
)
vs.)
)
PROGRESSIVE DIRECT INSURANCE)
COMPANY, DOES I through X; and ROE)
CORPORATIONS I through X, inclusive,)
)
Counter-Defendant.)

CASE NO: 2:22-cv-00822-RFB-EJY

**STIPULATION AND ~~PROPOSED~~
ORDER TO EXTEND DISCOVERY
DEADLINES**

(THIRD REQUEST)

Defendant/Counter-Claimant, Michael Laythorpe, and Plaintiff/Counter-Defendant, Progressive Direct Insurance Company, by and through their respective counsel of record, do hereby stipulate to extend the remaining deadlines in the current scheduling order and discovery plan in place in this matter for a period of seventy six (76) days for the reasons explained herein. The parties agree to an extension of 76 days in light of the fact that a 60-day continuance would result in the final week of discovery falling on Thanksgiving week and a 90 day continuance would fall

on Christmas week. A discovery cut-off of December 17, 2023 (76 days) would avoid the holidays in that respect.

Pursuant to Local Rule IA 6-1(a), the parties hereby aver that this is the third discovery extension requested in this matter. Discovery is scheduled to close October 2, 2023, and this Stipulation and [Proposed] Order is thus timely pursuant to Local Rule 26-3.

**DISCOVERY COMPLETED TO DATE PURSUANT
TO LR 26-3(a) -[CHRONOLOGICAL]**

1. The parties conducted the FRCP 26(f) Conference on October 10, 2022;
2. Defendant/Counter-Claimant served its Initial List of Witnesses and Documents on November 22, 2022;
3. Plaintiff/Counter-Defendant served by mail its Initial List of Witnesses and Documents on November 1, 2022. Defendant/Counter-Claimant did not receive the document and notified Plaintiff/Counter-Defendant by email on December 19, 2022. The document was re-served via email on December 20, 2022.
4. Plaintiff/Counter-Defendant served its Initial Expert Disclosure Statement on February 2, 2023;
5. Defendant/Counter-Claimant served his Initial Expert Disclosure Statement on February 2, 2023;
6. Defendant/Counter-Claimant served his First Supplemental List of Witnesses and Documents on February 7, 2023;
7. Deposition of Shabnam Salmani, Progressive adjuster, was taken on February 21, 2023;
8. Deposition of Jennifer Pearson, Progressive adjuster, was taken on February 22, 2023;
9. Defendant/Counter-Claimant served his initial set of Interrogatories, Requests for Admissions, and Requests for Production of Documents on March 3, 2023;
10. Plaintiff/Counter-Defendant served its initial set of Interrogatories and Requests for Production of Documents on March 3, 2023;

11. Defendant/Counter-Claimant served his Second Supplemental List of Witnesses and Documents on March 3, 2023;
12. Deposition of Defendant/Counter-Claimant, Michael Laythorpe, was taken on March 6, 2023;
13. Defendant/Counter-Claimant served his Designation of Rebuttal Expert Witnesses on March 6, 2023;
14. Plaintiff/ Counter-Defendant served its Designation of Rebuttal Expert Witnesses on March 6, 2023;
15. Deposition of Plaintiff/Counter-Defendant's Expert David H. Paige was taken on March 21, 2023;
16. Deposition of Defendant/Counter-Claimant's Expert Hugh Black was taken on March 22, 2023;
17. Defendant/Counter-Claimant served his Third Supplemental List of Witnesses and Documents on April 12, 2023;
18. Plaintiff/ Counter-Defendant served its discovery responses on April 17, 2023;
19. Defendant/Counter-Claimant served his discovery responses on April 17, 2023;
20. Defendant/Counter-Claimant served his Fourth Supplemental List of Witnesses and Documents on May 15, 2023;
21. Plaintiff/Counter-Defendant served its First Supplemental List of Witnesses and Documents on August 15, 2023;
22. Defendant/Counter-Claimant served his Fifth Supplemental List of Witnesses and Documents August 28, 2023 (medical records relating to recent surgeries in Colorado, 297 pages);
23. Plaintiff/Counter-Defendant served its Second Supplemental List of Witnesses and Documents on September 1, 2023 (Progressive Insurance written policies and procedures, 380 pages);
24. Plaintiff/Counter-Defendant served its First Supplemental Answer to Defendant/Counter-Claimant's Interrogatories on September 1, 2023;

1 25. Plaintiff/Counter-Defendant served its First Supplemental Responses to
2 Defendant/Counter-Claimant's Requests for Production of Documents on
3 September 1, 2023;

4 26. Defendant/Counter-Claimant served his Sixth Supplemental List of Witnesses and
5 Documents September 7, 2023 (CCMSI workers' compensation ledger showing
6 current lien in the amount of \$103,321.38, 17 pages).

7 **MOTION PRACTICE COMPLETED TO DATE**

8 1. Plaintiff/Counter-Defendant filed a Motion for Summary Judgment on January 5,
9 2023. Document 13;

10 2. Defendant/Counter-Claimant filed his Response to Motion for Summary Judgment
11 on January 26, 2023 and his Counter-Motion for Summary Judgment on January 27,
12 2023. Document 14 and 15;

13 3. Plaintiff/Counter-Defendant filed it's Reply in Support of Motion for Summary
14 Judgment on February 6, 2023 and it's Response to Counter-Motion for Summary
15 Judgment on February 13, 2023. Document 16 and 17;

16 4. Defendant/Counter-Claimant filed his Reply in support of Counter-Motion for
17 Summary Judgment on February 27, 2023. Document 19;

18 5. Plaintiff/Counter-Defendant filed a Stipulated Protective Order on August 8, 2023,
19 which was denied without prejudice, and refiled it on August 22, 2023. Document
20 28 and 32;

21 6. Plaintiff/Counter-Defendant filed a Motion for Protective Order on July 12, 2023,
22 which was denied without prejudice, and refiled it on July 27, 2023 which is
23 pending. Document 25 and 27;

24 7. Defendant/Counter-Claimant filed his Response to Motion for Protective Order on
25 August 10, 2023. Document 30; and

26 8. Plaintiff/Counter-Defendant filed it's Reply in Support of Motion for Protective
27 Order on August 17, 2023. Document 31.

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**DISCOVERY TO BE COMPLETED PURSUANT TO
LR-26-3(b) [CHRONOLOGICAL]**

1. Deposition of Progressive's NRCP 30(b)(6) Person(s) With Knowledge initially scheduled for March 29, 2023 and subsequently re-scheduled for August 29, 2023, which was initially postponed following Plaintiff/Counter-Defendant's Objection to topics set forth in the Notice of Deposition and again postponed following the pending Motion For Protective Order filed on July 27, 2023
2. Other employees' depositions thereafter as may be necessary;
3. Depositions of Defendant/Counter-Claimant's treating physicians, including surgeons who reside in Colorado, for whom records have only recently been provided to the parties;
4. Deposition of Stuart Kaplan, M.D., who performed a medical records review and medical examination of Defendant/Counter-Claimant at the request of CCMSI in connection with the pending workers' compensation claim, which has been delayed due to Defendant/Counter-Claimant's recent surgeries and subsequent procurement of related records;
5. Deposition of David J. Oliveri, M.D., who performed a medical records review on behalf of Plaintiff/Counter-Defendant, which has been delayed due to Defendant/Counter-Claimant's recent surgeries and subsequent procurement of related records;
6. Supplemental written discovery as may be necessary.

REASONS FOR EXTENSION PURSUANT TO LR 26-3(c)

As the Court is aware, Defendant/Counter-Claimant underwent a spinal fusion on March 10, 2023. On April 14, 2023 Defendant/Counter-Claimant underwent a right shoulder arthroscopic surgery with extensive debridement. Medical records were ordered and recently received and supplemented on August 28, 2023. Following receipt of the relevant records, Plaintiff's Counsel has indicated Plaintiff wishes to depose those treating physicians. The depositions of Dr. Kaplan and Dr. Oliveri have been delayed in light of the recent medical activity.

In addition, the parties are currently involved in a discovery dispute and Plaintiff/Counter-Defendant has filed a Motion For Protective Order regarding the timely noticed Rule 30(b)(6) deposition of Progressive's Person With Knowledge relating topics listed in the Rule 30(b)(6) notice, to which Plaintiff/Counter-Defendant has objected. In connection therewith, Plaintiff/Counter-Defendant produced an updated Privilege Log on August 15, 2023. The Motion is currently pending.

~~PROPOSED~~ NEW DISCOVERY DEADLINES PURSUANT TO LR 26-3(d)

EXPERT DISCLOSURE DEADLINE..... PASSED

REBUTTAL DISCLOSURE DEADLINE..... PASSED

	<u>CURRENT</u>	<u>PROPOSED</u> 18
DISCOVERY DEADLINE	October 2, 2023	December 17, 2023
DISPOSITIVE MOTION DEADLINE	November 1, 2023	January 16, 2024
JOINT PROPOSED PRETRIAL ORDER	December 1, 2023	February 15, 2024

If this extension is granted, all anticipated additional discovery should be concluded within the stipulated extended deadlines. This request is made in good faith and not for the purpose of delay.

DATED this 8th day of September, 2023

DATED this 8th day of September, 2023

MOUNTAIN WEST LAWYERS

KEATING LAW GROUP

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IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: September 8, 2023